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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Lemelson Medical, Education & Research  
Foundation, Limited Partnership,  
Plaintiff,

vs.

Nexfor, Inc.; et al.  
Defendants.

**No. CIV-01-2288 PHX (HRH)**

**MOTION TO DISMISS**

The Federal Circuit has determined that all claims of the patents-in-suit are unenforceable in *Symbol Technologies, Inc. v. Lemelson Medical, Education & Research Foundation, Limited Partnership*, United States Court of Appeals for the Federal Circuit, No. 04-1451. Plaintiff therefore moves to dismiss this case in its entirety, with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(2).

Lemelson notes that certain defendants have filed counterclaims; however, most, if not all, of these counterclaims appear moot based on the decisions in the *Symbol* case. Absent any indication in response to this motion that any defendant intends to pursue

1 any counterclaim believed to survive these decisions, the Court should dismiss this case  
2 in its entirety.

3 RESPECTFULLY SUBMITTED this 22nd day of December, 2005.

4 VICTORIA GRUVER CURTIN, P.L.C.

5  
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CERTIFICATE OF SERVICE

Pursuant to Fed.R.Civ.P. 5(b), I certify that on the 22nd day of December, 2005, I personally caused to be served electronically and first-class mail, the attached document to:

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20 A copy of this document has been  
21 forwarded directly to Judge Holland  
22 via priority mail this 22nd day of December, 2005.

23 /s/Laura Keller

24 Laura Keller  
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